

ALTVIEW LAW GROUP, LLP
John M. Begakis, Esq. (SBN 278681)
john@altviewlawgroup.com
Sheena B. Tehrani, Esq. (SBN 326373)
sheena@altviewlawgroup.com
9454 Wilshire Blvd., Suite 825
Beverly Hills, California 90212
Telephone: (310) 230-5580
Facsimile: (562) 275-8954

Attorneys for Plaintiff
THAT ONE VIDEO ENTERTAINMENT, LLC, a
California limited liability company

UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA

THAT ONE VIDEO
ENTERTAINMENT, LLC, a
California limited liability company,

Plaintiff,
vs.

KOIL CONTENT CREATION PTY
LTD., an Australian proprietary
limited company doing business as
NOPIXEL; MITCHELL CLOUT, an
individual; and DOES 1-25, inclusive,

Defendants.

CASE NO: 2:23-cv-02687 SVW (JCx)

[Assigned to the Hon. Stephen V. Wilson;
Ctrm 10A]

**JOINT STIPULATION REGARDING
DISPUTE OVER PRODUCTION OF
DOCUMENTS**

Hearing:

Judge: Hon. Jacqueline Chooljian

Date: July 30, 2024

Time: 9:30 a.m.

Place: Ctrm 750, 255 East Temple Street,
Los Angeles, California, 90012

Action Filed: April 10, 2023

Trial Date: September 17, 2024

**JOINT STIPULATION REGARDING DISPUTE OVER PRODUCTION OF
DOCUMENTS**

TABLE OF CONTENTS

I.	PLAINTIFF’S INTRODUCTORY STATEMENT PURSUANT TO L.R. 37-	
2.1	1
A.	Factual Background	1
B.	Procedural Background	2
II.	DEFENDANT’S INTRODUCTORY STATEMENT PURSUANT TO LR	
37-2.1	4
III.	DEFENDANT’S RESPONSES TO PLAINTIFF’S DOCUMENT	
REQUESTS	6
A.	Plaintiff’s Request No. 16.....	6
B.	Defendant’s Verbatim Response to Document Request No. 16.....	6
C.	Defendant’s Verbatim Supplemental Response to Document Request No. 16	6
D.	Plaintiff’s Contentions As To Why Defendant’s Response To Plaintiff’s	
Document Request No. 16 Is Insufficient		7
E.	Defendant’s Statement Regarding The Sufficiency Of Defendant’s Response	
To Document Request No. 16		8
IV.	PLAINTIFF’S RESPONSES TO DEFENDANT’S DOCUMENT	
REQUESTS	8
A.	Defendant’s Request No. 2	8
B.	Plaintiff’s Verbatim Response to Document Request No. 2	9
C.	Defendant’s Contentions As To Why Plaintiff’s Response To Defendant’s	
Document Request No. 2 Is Insufficient.		9
D.	Plaintiff’s Statement Regarding The Sufficiency Of Plaintiff’s Response To	
Document Request No. 2.....		10

JOINT STATEMENT

Pursuant to Federal Rule of Civil Procedure (“FRCP”) 37 and Local Rule (“LR”) 37-1, Plaintiff THAT ONE VIDEO ENTERTAINMENT, LLC (“TOVE” or “Plaintiff”) and Defendant KOIL CONTENT CREATION PTY LTD., an Australian proprietary limited company doing business as NOPIXEL (“NoPixel” or “Defendant”) (collectively with Plaintiff, the “Parties”), have met and conferred regarding discovery of documents and information sought by Plaintiff’s First Set of Requests for Production of Documents (“Plaintiff’s Document Requests”) and as to documents sought by Koil’s First Set of Production of Documents (“Defendant’s Document Requests”). Declaration of John Begakis (“Begakis Decl.”) at ¶¶ 6, 8. The Parties are unable to reach an agreement at this time, and respectfully submit their positions.

I. PLAINTIFF’S INTRODUCTORY STATEMENT PURSUANT TO L.R. 37-2.1

Plaintiff’s contentions in this submission reflect the state of discovery as of June 25, 2024, the date on which Plaintiff provided its portion of this submission to NoPixel’s counsel under LR 37-2.2.

A. Factual Background

TOVE is a content creation and business management company that hired Daniel Tracey, a talented software developer, to work as its lead developer. First Amended Complaint (“FAC”) at ¶ 9. Because Mr. Tracey is a foreign national working in the United States, and TOVE is a U.S.-based company, TOVE also sponsored Mr. Tracey’s work visa. *Id.* Pursuant to the terms of his employment relationship, TOVE was permitted to contract with third parties for the services of Mr. Tracey, in exchange for Mr. Tracey’s agreement that TOVE would receive a portion of the compensation paid to him in the course of rendering services for third parties. *Id.* at ¶ 10.

1 Defendants operate a very successful videogame server, wherein individuals
 2 who play the “open world” videogame entitled “Grand Theft Auto V” (the “Game”)
 3 can “role-play” with other individuals in a closed Game environment on such server
 4 (the “NoPixel Server”). *Id.* at ¶ 11. In or about early 2020, NoPixel desired to
 5 engage Mr. Tracey, in his role as a software developer, to make significant updates
 6 to the NoPixel Server (the “Services”). *Id.* at ¶ 12. Accordingly, NoPixel contracted
 7 with TOVE for the services of Mr. Tracey, in exchange for NoPixel’s agreement to
 8 pay TOVE (by way of Mr. Tracey) fifty percent (50%) of Game revenue (the
 9 “Agreement”). *Id.*

10 From in or about early 2020 to in or about December 2022, Mr. Tracey
 11 rendered the Services to NoPixel. *Id.* at ¶ 13. In rendering the Services, Mr. Tracey
 12 made significant creative contributions to both the “front end” visual aesthetics of
 13 the Game, and the “back end” information management systems that allow the
 14 NoPixel Server to function. *Id.* Specifically, Mr. Tracey designed and created the
 15 entire payment processing system for the NoPixel Server, which facilitated the
 16 processing of millions of dollars a year in payments to Defendants. *Id.*

17 In or about late 2022, a personal dispute developed between Mr. Tracey and
 18 Defendant Clout, NoPixel’s founder and owner. *Id.* at ¶ 15. Their dispute ultimately
 19 culminated, on or about December 27, 2022, in Defendants terminating Mr.
 20 Tracey’s role with NoPixel and, thus, his authority to access the NoPixel Server. *Id.*
 21 Defendants, however, never informed Mr. Tracey of his termination, or of the
 22 removal of his access to the NoPixel Server, and thereafter claimed that Mr. Tracey
 23 caused a “data breach” when he attempted to access the NoPixel Server believing he
 24 still possessed access authority. *Id.* at ¶¶ 16-18.

25 **B. Procedural Background**

26 Plaintiff therefore filed its operative FAC for Declaratory Relief, Breach of
 27 Contract, and Accounting on or about July 7, 2023. Dkt. 18. On or about April 8,
 28

1 2024, Plaintiff served its first set of written discovery requests, including its First
2 Set of Requests for Production of Documents (the “RPDs”). Begakis Decl. at ¶ 3.
3 Because of Plaintiff’s right to an accounting of all profits generated from the
4 NoPixel Server as a potential co-owner thereof, and because of Plaintiff’s potential
5 claim to 50% of the profits via the parties’ agreement, Plaintiff’s RPD Number 16
6 requested financial documents related to NoPixel’s revenues generated and costs
7 incurred from NoPixel’s operation of the NoPixel Server (“RPD No. 16”).

8 NoPixel served its initial set of responses on or about May 8, 2024. *Id.* at ¶ 4.
9 In response to RPD No. 16, NoPixel disingenuously asserted that the term “NoPixel
10 Server” was ambiguous and unclear, and refused to produce any responsive
11 documents on such basis. *Id.* On or about May 9, 2024, Plaintiff’s counsel emailed
12 Defendants’ counsel regarding various deficiencies with NoPixel’s discovery
13 responses, including that NoPixel’s objection to the term “NoPixel Server” was
14 improper because it was a commonly used term for Defendants’ role-play server and
15 was one *Defendants themselves* used on their website to describe the server. *Id.* at ¶
16 5; Exhibit “A” thereto.

17 On or about May 22, 2024, counsel for the parties met and conferred in
18 person, as required by Local Rule 37-1, to address NoPixel’s deficient discovery
19 responses. *Id.* at ¶ 6. On the issue of whether the term “NoPixel Server” was
20 ambiguous or unclear, NoPixel’s counsel appeared to concede that it was not. *Id.*
21 However, NoPixel’s counsel was non-committal on whether NoPixel would
22 ultimately provide financial documents responsive to RPD No. 16, suggesting that
23 such financial documents were somehow “irrelevant” to the dispute. *Id.*

24 On or about June 5, 2024, NoPixel served supplemental discovery responses,
25 including responses to certain of Plaintiff’s RPDs. *Id.* at ¶ 7. However, NoPixel
26 continued to refuse provide any financial documents responsive to RPD No. 16, and
27 continued to contend that such documents were “unrelated to this litigation.” *Id.*
28

1 Therefore, on or about June 12, 2024, Plaintiff's counsel sent Defendants' counsel
 2 an email correspondence identifying such continued deficiency, but Defendants'
 3 counsel's meandering response failed to indicate that NoPixel would produce
 4 financial documents responsive to RPD No. 16. *Id.* at ¶ 8.

5 **II. DEFENDANT'S INTRODUCTORY STATEMENT PURSUANT TO LR**
 6 **37-2.1**

7 Plaintiff's Introductory Statement incorrectly states the background of the
 8 case. Defendant did hire Daniel Tracey to work as a developer. Defendant never
 9 hired TOVE or agreed that by hiring Tracey, it was actually hiring TOVE. While
 10 that subject is still up for dispute, what is not in dispute are the terms that Tracey
 11 and Koil agreed to with regard to the revenue Tracey would receive. There was
 12 never an agreement to pay Tracey (or TOVE) 50% of all of the revenue earned by
 13 Koil. There was only an agreement to pay Tracey 50% of the revenue received from
 14 certain specifically identified servers.

15 On March 22, 2022, Tracey sent Mitch Clout, owner and president of Koil,
 16 the terms of his employment on the Discord message app. Clout Decl. ¶7 and
 17 Exhibit 1 thereto. In the message, Tracey outlines the terms of his employment.
 18 First, Tracey sets out the scope of his work in a section called "Primary
 19 Responsibilities" (i.e., "leading infrastructure team," "Ensuring server
 20 setup/stability/uptime/security (for everything/all servers, even other games if we do
 21 them, etc.>") Then, he mentions "Secondary Responsibilities" (i.e., (Building in-
 22 game mechanics, etc.). Third, he lists the members of the "Infrastructure Team.
 23 Fourth, and most importantly, he lists "Pay" which says

24 "Base: \$10k

25 Revenue Splits:

- 26 - Current Revenue Splits:
- 27 - 50% India

- 1 - 50% Whitelist Prio (incl. lotto)
- 2 - 50% all international servers (Note: There were only ? international
- 3 servers)¹
- 4 - Ability to add revenue split at any time

5 A few lines down, Tracey writes: “Contract renegotiations (sic) every 6
6 months. – This just adds/removes revenue splits that were agreed in those 6 months
7 in the next contract (if needed).”

8 Koil agreed to this revenue split and paid Tracey according to these terms
9 until Tracey’s employment was terminated in December 2022. Clout Decl. ¶12

10 TOVE is now claiming that despite the fact that Tracey and Koil agreed that
11 he would be paid only for the servers mentioned above, that TOVE is actually
12 entitled to receive 50% of the revenue from all of Koil’s servers, despite the fact that
13 Koil never agreed to pay Tracey (or TOVE) that money, and it directly contradicts
14 the terms of the agreement. Clout Decl. ¶13-14.

15 With regard to Koil’s Motion to Compel, as discussed below, Koil asked
16 TOVE to produce all of his communications with Tracey with regard to his
17 employment with TOVE or Koil, payments received from or sent to Tracey or Koil.
18 While TOVE inserted a boilerplate objection, it stated that it would produce all
19 documents responsive to this request in its possession, custody or control. However,
20 when producing the communications between TOVE and Tracey, TOVE decided to
21 only produce communications that occurred prior to December 31, 2022. These
22 post-2022 communications are clearly relevant and must be produced.

23 ///

24 ///

25 ///

26 ¹ India, Whitelist Prio and International Servers refer to specific servers that earned
27 revenue for Koil. The International Servers covered Spain and South America. See
28 Clout Declaration ¶7-11.

1 **III. DEFENDANT'S RESPONSES TO PLAINTIFF'S DOCUMENT**
 2 **REQUESTS**

3 **A. Plaintiff's Request No. 16**

4 All DOCUMENTS evidencing all revenues generated, and costs incurred,
 5 from YOUR operation of the NOPIXEL SERVER.

6 **B. Defendant's Verbatim Response to Document Request No. 16**

7 Objection. Responding Party incorporates by references its Preliminary
 8 Statement as though fully set forth herein. Responding Party objects to this Request
 9 on the grounds that it is burdensome, oppressive, overbroad, and compound.
 10 Responding Party further objects to this Request on the grounds that it is vague,
 11 ambiguous, and unintelligible.

12 Without waiving said objections, and after a diligent search, and a reasonable
 13 inquiry having been made in an effort to comply with said Request, Responding
 14 Party responds as follows: Based on the ambiguous and unclear definition provided
 15 for the NOPIXEL SERVER, Responding Party is unable to provide a response.

16 **C. Defendant's Verbatim Supplemental Response to Document**
 17 **Request No. 16**

18 Objection. Responding Party incorporates by references its Preliminary
 19 Statement as though fully set forth herein. Responding Party objects to this Request
 20 on the grounds that it is burdensome, oppressive, overbroad, and compound.
 21 Responding Party further objects to this Request on the grounds that it is vague,
 22 ambiguous, and unintelligible.

23 Notwithstanding and without waiving these objections, Responding Party
 24 provides the following supplemental response: The subject documents are already in
 25 the possession, custody, and control of the Propounding Party insofar as the
 26 requested documents were produced to the Propounding Party on or about May 8,
 27 2024. The responsive documents are contained within Bates #MC0068 to Bates
 28

1 #MC0072 produced herewith, which reflect the 50% net participation agreement
 2 between TRACEY and NoPixel via Discord on March 14, 2022. Propounding
 3 Party's definition of "NOPIXEL SERVER" is otherwise overbroad as it: (a)
 4 encompasses over 172 servers, (b) would require production of financial documents
 5 unrelated to this litigation, (c) wholly unrelated to any work performed by
 6 TRACEY, and (d) is, therefore, not calculated to lead to the discovery of admissible
 7 evidence.

8 **D. Plaintiff's Contentions As To Why Defendant's Response To**
 9 **Plaintiff's Document Request No. 16 Is Insufficient**

10 Though NoPixel initially tried to avoid its obligation to produce documents
 11 responsive to RPD No. 16 on the wholly disingenuous basis that the term "NoPixel
 12 Sever" was vague, NoPixel ultimately settled on the position that it was not
 13 obligated to produce such documents because they were "wholly unrelated to any
 14 work performed..." In other words, in NoPixel's view, it need only produce
 15 evidence in discovery that it deems relevant by virtue of its determination of the
 16 merits of its opponent's claims. While this position is quite convenient for NoPixel,
 17 it is – fortunately – not how discovery works under the Federal Rules.

18 In reality, the scope of discovery is extremely broad, and entitles the
 19 requesting party to all relevant information, provided each request is proportionate.
 20 FRCP 26(b)(1); *See Miller*, 141 F.R.D. at 296. Because the FAC includes
 21 allegations that Plaintiff is a co-owner in the copyright of the code comprising the
 22 NoPixel Server and is entitled to fifty percent (50%) of the revenues generated
 23 therefrom pursuant to the parties' agreement, Plaintiff is entitled to discovery of all
 24 financial documents related to revenues generated and costs incurred by NoPixel's
 25 operation of the Server. Plaintiff's request for such documents is also proportional
 26 because the scope of Plaintiff's potential ownership and right to profits is broad
 27
 28

1 enough to entitle Plaintiff to half of all monies reflected in such requested
2 documents.

3 **E. Defendant's Statement Regarding The Sufficiency Of**
4 **Defendant's Response To Document Request No. 16**

5 Pursuant to the Agreement that Koil made with Tracey, Koil agreed to pay
6 Tracey, 50% of Koil revenue from four servers, the India Server, the Whitelist Prio
7 server, and the International Servers (Spain and South America). Tracey (nor
8 TOVE) never asked for, nor did Koil agree to pay Tracey (or TOVE) for any other
9 servers. The agreement is set forth in the Discord messages set forth above and
10 attached as Exhibit 1.

11 As there was never a request for, or an agreement to pay the revenue for any
12 servers other than the ones mentioned in the Discord message (i.e., India, Whitelist
13 Priority, Spain and South America), and any request for revenue earned from other
14 servers is completely irrelevant to this case and cannot lead to the discovery of
15 admissible evidence.

16 **IV. PLAINTIFF'S RESPONSES TO DEFENDANT'S DOCUMENT**
17 **REQUESTS**

18 **A. Defendant's Request No. 2**

19 All communications between TOVE and Daniel Tracey (hereinafter
20 "TRACEY") that refer to or reflect the following subjects (TOVE is defined
21 as That One Video Entertainment, LLC)

22 a) TRACEY'S employment status with TOVE

23 b) Employment agreements with TOVE

24 c) TRACEY'S immigration status

25 d) Any agreements with KOIL

26 e) Any agreement with Mitchell Clout (hereinafter "CLOUT")

27 f) Any work performed by TRACEY for Koil

1 g) Any work performed by TRACEY for CLOUT

2 h) Payments from KOIL to TRACEY

3 i) Payments from KOIL to TOVE

4 j) Payments from TRACEY to TOVE

5 k) Payments from TOVE to TRACEY

6 **B. Plaintiff's Verbatim Response to Document Request No. 2**

7 Objection. Responding Party incorporates by references its Preliminary
8 Statement as though fully set forth herein. Responding Party objects to this Request
9 to the extent that it is overbroad and unduly burdensome. Responding Party objects
10 to this Request to the extent it contains multiple subparts. Responding Party further
11 objects to this Request to the extent it seeks information that is protected by
12 Responding Party's rights of privacy, or protected by the attorney-client and/or
13 attorney work product doctrine.

14 Subject to and without waiving the foregoing objections, Responding Party
15 responds as follows: Responding Party will produce all non-privileged documents
16 responsive to this Request that are within Responding Party's possession, custody or
17 control. Additionally, discovery is ongoing. As such, Responding Party reserves the
18 right to supplement, amplify or amend its responses to this Request.

19 **C. Defendant's Contentions As To Why Plaintiff's Response To**
20 **Defendant's Document Request No. 2 Is Insufficient.**

21 Plaintiff stated in its reply that it would produce "all non-privileged
22 documents responsive to this Request" that were within Plaintiff's "possession,
23 custody or control" but then only produced communications through the end of
24 2022.

25 To the extent that TOVE and Tracey were having communications in 2023
26 about Defendants, Tracey's work for TOVE (which TOVE claims was actually to
27 work for Defendants) and the payments that Tracey received from TOVE after 2022
28

1 are clearly relevant to this case. On January 9, 2023, Mr. Begakis sent a demand
 2 letter to Koil, stating that he was representing Tracey in a potential lawsuit against
 3 Koil. A true and correct copy of the January 9, 2023 letter is attached to the Zerner
 4 Declaration as Exhibit 2. When Koil rebuffed his demands, Mr. Begakis sent (on
 5 February 6, 2023) another letter to Koil, now claiming he was representing TOVE
 6 and that TOVE was actually in an employment agreement with Tracey. A true and
 7 correct copy of this February 6, 2023 letter is attached to the Zerner Declaration as
 8 Exhibit 3.

9 Since these letters and TOVE's lawsuit is entirely based on Tracey's work for
 10 Koil, it is certainly possible (if not probable) that TOVE and Tracey were having
 11 communications about these claims and the lawsuit. All of these communications
 12 would certainly be relevant. Further, since Tracey is TOVE's main witness against
 13 Koil (as no one at Koil ever spoke to anyone at TOVE), any payments made by
 14 TOVE to Tracey could show bias on Tracey's part.

15 As these documents are clearly relevant and as TOVE agreed to produce
 16 them, the court should order them produced.

17 **D. Plaintiff's Statement Regarding The Sufficiency Of**
 18 **Plaintiff's Response To Document Request No. 2**

19 *First*, Defendants intentionally fail to make clear that Plaintiff has produced
 20 all of its communications with Mr. Tracey up to December 31, 2022, whether with
 21 respect to payments made between them or otherwise. But it is undisputed that Mr.
 22 Tracey was terminated from his role with Defendants on or about December 27,
 23 2022. Therefore, none of Mr. Tracey's communications with Plaintiff after
 24 December 31, 2022 are relevant to a dispute that deals with an applicable time
 25 period concluding on December 27, 2022.

26 *Second*, in their effort to seek irrelevant communications made after the
 27 relevant time period at issue in the dispute, Defendants reveal the real reason they
 28

1 seek such communications: because they believe there has been coordination
2 between Plaintiff and Mr. Tracey with respect to this litigation. But Plaintiff's
3 communications with Mr. Tracey made pursuant to the parties' common interest in
4 this dispute and regarding litigation strategy discussed during attorney-client
5 privileged communications remain privileged in any event. Evid. Code § 952;
6 *Costco Wholesale Corp. v. Sup. Ct.*, (2009) 47 Cal.4th 725, 733; *Citizens for Ceres*
7 *v. Sup. Ct.*, (2013) 217 Cal.App.4th 889, 916-17. And, in revealing their desire to
8 obtain such privileged communications exchanged after the relevant time period,
9 Defendants prove that their effort is not proportional to the needs of a dispute
10 involving a claim for copyright co-ownership and entitlement to certain profits.
11 FRCP 26(b)(1).

12 ***Third***, Defendants' insistence on ignoring Plaintiff's claim to be a co-owner
13 of the copyright in the code due to Mr. Tracey's contributions to the NoPixel Server
14 while employed by Plaintiff also does Defendants no favors here. If financial
15 documents evidencing Plaintiff's potential right to 50% of the profits of the NoPixel
16 Server are irrelevant to this dispute because Defendants "never hired [Plaintiff] or
17 agreed that by hiring Tracey, [they were] actually hiring [Plaintiff]" (even though
18 such an agreement is not a prerequisite for Plaintiff to own 50% of Mr. Tracey's
19 contributions by virtue of his status as Plaintiff's employee at the time his
20 contributions to the NoPixel Server were made), then Mr. Tracey's communications
21 with Plaintiff made in the course of that employment relationship – *especially*
22 communications made after Mr. Tracey was no longer contributing to the Server –
23 are also irrelevant. Defendants cannot have it both ways.

24 ///

25 ///

26 ///

27 ///

1
2 DATED: July 9, 2024

ALTVIEW LAW GROUP, LLP

3
4 By: /s/ John M. Begakis
5 **JOHN M. BEGAKIS**
6 **SHEENA B. TEHRANI**
7 *Attorneys for Plaintiff* THAT ONE VIDEO
8 ENTERTAINMENT, LLC, a California
9 limited liability company

10
11 DATED: July 9, 2024

MORRISON COOPER, PLP

12 By: /s/ Larry Zerner
13 **LARRY ZERNER**
14 *Attorneys for Defendants* KOIL CREATION
15 PTY LTD., an Australian proprietary limited
16 company
17
18
19
20
21
22
23
24
25
26
27
28